

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

MARIO ARTHUR GARCIA,

Petitioner,

v.

**CIVIL ACTION NO. 3:13-CV-22
CRIMINAL ACTION NO. 3:09-CR-66-2
(BAILEY)**

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before this Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert. By Local Rule, this action was referred to Magistrate Judge Seibert for submission of a report and a recommendation ("R&R"). Magistrate Judge Seibert filed his R&R on July 30, 2013 [Crim. Doc. 214 / Civ. Doc. 6]. In that filing, the magistrate judge recommended that this Court dismiss this § 2255 petition with prejudice [Crim. Doc. 200 / Civ. Doc. 1].

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo*

review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Seibert's R&R were due within fourteen (14) days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The docket reflects that service was accepted on August 5, 2013 [Crim. Doc. 215]. To date, no objections have been filed. Accordingly, this Court will review the report and recommendation for clear error.

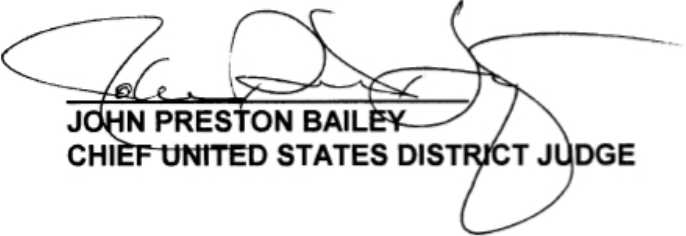
Upon careful review of the report and recommendation, it is the opinion of this Court that the magistrate judge's **Report and Recommendation [Crim. Doc. 214 / Civ. Doc. 6]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. As such, this Court hereby **DENIES** and **DISMISSES WITH PREJUDICE** the petitioner's § 2255 petition **[Crim. Doc. 200 / Civ. Doc. 1]**. Therefore, this matter is hereby **ORDERED STRICKEN** from the active docket of this Court. The Clerk is further **DIRECTED** to enter judgment in favor of the Respondent.

As a final matter, upon an independent review of the record, this Court hereby **DENIES** the petitioner a certificate of appealability, finding that he has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

DATED: September 9, 2013.



JOHN PRESTON BAILEY
CHIEF UNITED STATES DISTRICT JUDGE